

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAVIER JIMENEZ,

Plaintiff,

v.

Civ. No. 20-742 WJ-GJF

CURRY COUNTY ADULT DETENTION CENTER,

Defendant.

ORDER EXTENDING PAYMENT DEADLINE

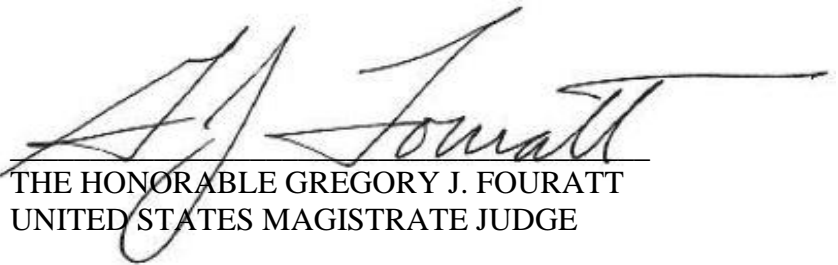
This matter is before the Court on Plaintiff Javier Jimenez’s motion to reconsider the Order Granting Leave to Proceed *In Forma Pauperis* [ECF 4, 5]. In that Order, the Court set a deadline of September 11, 2020 to make an initial partial payment of \$12.00. The payment is required by statute, as Plaintiff filed a civil complaint while incarcerated. *See* 28 U.S.C. § 1915(b)(1). The amount represents “20 percent of the greater of—(A) the average monthly deposits to the prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint...” *Id.*

In his motion, Plaintiff states he cannot afford to pay \$12.00 “due to his families ordering care packs.” [ECF 5 at 1]. The motion does not elaborate further, but the original *in forma pauperis* application states his mother gave him money “for commissary.” [ECF 3 at 1]. It appears Plaintiff wishes to spend his money on care packages, rather than this litigation. However, in enacting the *in forma pauperis* statute, Congress determined prisoners must “bear some marginal cost for each legal activity” and “feel the deterrent effect created by liability for filing fees.” *Cosby v. Meadors*, 351 F.3d 1324, 1327 (10th Cir. 2003) (quotations omitted). “[W]hen a prisoner has sufficient income to pay a monthly partial filing fee and instead spends his

money on amenities at the prison canteen,” the Court cannot excuse “the failing to make the required partial payments.” *Id.* Accordingly, the Court will extend the deadline to make an initial partial payment to September 22, 2020, rather than excusing it entirely. If Plaintiff fails to timely submit the \$12.00 payment, the Court will dismiss this case without further notice.

IT IS ORDERED that the Motion to Reconsider [ECF 5] is **DENIED**; and the deadline for Plaintiff to make his \$12.00 partial payment is extended through September 22, 2020.

SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE